



Indiana Court Times

Supreme Court, Division of State Court Administration

Volume 8

January 1999

Number 1

Chief Justice Delivers State of Judiciary Speech

Indiana Chief Justice, Randall T. Shepard delivered his State of the Judiciary Speech before the Indiana General Assembly on January 13, 1999. The following is a digest of the content.

“A Judiciary With A Plan For Its Future”

There was a time when the best that could be said of Indiana’s highly fragmented court system was that the people in it worked hard and honestly.

The challenges of the present era, however, require that we also work smarter. Indiana’s judges approach their assignment of rendering justice with a muscular attitude about how we might act collectively to do a better job. The work Indiana judges do collectively becomes weightier each year and we have ambitious plans for the future.

Building a State-Wide Court System

First, there are many things the judiciary can do for itself to build a better system of justice. The project that is most important for individual citizens is the “weighted caseload system.” It takes into account the caseload of each court, weighted by the differing amounts of time different types of cases require. The disparities in the workload from one court to the next affects judges and citizens. The unevenness of the workload is something both the legislature and the courts need to address. We intend to use this tool to rearrange local caseloads so people will have more equal access to justice. This rearrangement of local assignments will be carried out by local judges, not the Supreme Court.

Our project for data processing is more daunting. Thirteen years ago we launched an effort to manage the mass of paper in the court system. We have spent two years designing an Automated Information Management System (AIMS) that will eventually require that information in every county court be stored in the same way so that all court computers can talk to each other. Creating this kind of public access may take five or ten years, but we are determined to begin.

We are also looking at ways to improve the venerable jury system. With the help of a substantial grant, the Citizens Commission on the Future of Indiana Courts will conduct surveys and hold public hearings to make sure the jury system can meet the needs of the next century.

We also realize we must continue to find ways to justify the public’s trust in us. Led by Court of Appeals Judge Jim Kirsch, a working group is taking part in a nationwide effort to raise trust and confidence in the judiciary. Judge Kirsch will lead Indiana’s team to Washington this spring for a national summit on this.

We are also determined to help people who are forced to come to court without adequate legal help. There are far too many citizens confronting legal problems who cannot afford a lawyer, and, fortunately, there is a strong impulse among practicing lawyers to contribute their time pro bono.

We intend to create committees in every judicial district to take better advantage of this willingness to contribute. We recently appointed judges to lead the first two of these efforts, Judge William Davis in northwest Indiana and Judge David Dreyer for the Indianapolis area. More judges will be appointed in 1999 and activities will be funded by our program of Interest on Lawyer Trust Accounts.

On the criminal law side, we are rapidly improving public defender services in local courts, using legislation you gave us for the Indiana Public Defender Commission in 1993. This year, the Department of Justice has invited us to tell the story of Indiana’s progress at a national conference. And Indiana’s effort has been noticed even overseas, as a new British book says “few states can match Indiana’s initiative” in public defender services.

We did this because Indiana has believed since 1854 that people facing a loss of liberty should not go to court without a lawyer simply because they are too poor.

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Our Own Capacity

A court system willing to take on those kinds of challenges is fairly serious about building its own capacity to act.

For example, we need to be better equipped to deal with the pervasive problem of drug and alcohol abuse. We have court-annexed drug and alcohol programs in some fifty counties, and our determination to make them more effective ought to help us fight this sort of crime.

In addition, I believe much progress has been made in recent years in improving the working relationship between juvenile court judges and the child welfare caseworkers and deputy prosecutors who bring child abuse, neglect and delinquency cases to court.

The most costly part of juvenile justice is the cost of placing children in foster care or specialized institutions. Our Judicial Center will now issue regular and detailed information about all facilities in Indiana that have space available, including the rates. This will hold costs down.

We are also determined to build our capacity to communicate. We have decided to take over our destiny with respect to the Internet. We expect soon to use the Internet to create an electronic clearinghouse to allow judges to communicate with each other.

Guiding the Profession

We are also a judiciary determined to re-shape the future of the legal profession as a whole.

One of our objectives is to create more opportunity for minority and other disadvantaged law students who aspire to join the profession. You've given us the best tool in the nation to do that, Indiana CLEO, the Conference for Legal Education Opportunity.

We have also been asking new questions about what it should take to become an Indiana lawyer. We want Indiana's new lawyers to be people who know what the law is, but we also want them to be good problem solvers. We want lawyers who can effectively apply the techniques of lawyering to help answer people's particular problems. In 1999 we expect to add the National Performance Test to the battery of examinations one must master to receive an Indiana law license.

Also, brand new lawyers will be sent to the sort of training that helps bridge gaps between what they learn in law school and what they need to know to help clients out in the real world.

Other Branches

Ours is a judiciary which has not been shy about asking the other branches for the tools we need to do justice.

In this year's session, for example, we hope the General Assembly will provide additional judges and magistrates in various places, in accordance with the recommendations of your Commission on Courts.

We also suggest experiments with family courts in three counties, and have asked for the money to make those experiments take wing. The O'Bannon administration and the Budget Committee have recommended the money to make this happen.

Another important thing that happened in 1998 was action on our proposal for a constitutional amendment to alter the jurisdiction of the Supreme Court. We are very grateful for your virtually unanimous adoption of this amendment in last year's session.

We also ask that you approve the recommendation of your Commission on Courts for a modest pay adjustment for judges and prosecutors. Since the last such raise in 1997, the other 35,000 full-time employees have had two raises. Regular adjustments will make our work on pay bills less difficult for all of us.

We also need to solve the problem of judicial and legislative space that has been brewing now for thirty years. The space problems that led to legislation in 1971 and 1984 have not disappeared. They have become worse. These are hardly just problems for public officials. They are problems for citizens who cannot get in the hearing room. It is a problem for a fractured Court of Appeals, and for a Tax Court that has no courtroom. It is a problem for a Supreme Court, most of whose staff is across the street.

Most of you know how much I love this building and how important I think it is that the three branches regularly interact here. Still, it seems obvious that the present arrangement is utterly inadequate and that facilities across Ohio Street for both the judicial and legislative branches is the best option for the future.

Conclusion

In short, we believe that this is a moment chock full of opportunities to build a better society. The Indiana judiciary has made the decision that we can build a better court system, and we will throw our energies at making it happen.

On the Web

Hamilton County Courts have a web page which includes their Mission Statement, General Information, Local Court Rules, detailed information on their Small Claims Court and Traffic Court procedures, and various required forms. Their official website through Access Indiana is <http://www.ai.org/hcc/index.html>.

Forms applicable to Trial Rule 77 issues have been placed at <http://www.ai.org/judiciary/admin> on the Information Management page. These forms are made available in WordPerfect, Microsoft Word, and HTML. Because of differences in computer systems, some modification of the forms may be necessary for margins and spacing.

To better serve both the courts and

the public, State Court Administration continues to update the information available at its website. Some additions planned for the near future include information about the GAL/CASA program, Advisory Opinions from the Judicial Qualifications Commission, and information about the Public Defender Commission and the Public Defense Fund.

The *Indiana Court Times* is now available on-line at the State Court Administration home page. Past issues of the newsletter are published to the web in Adobe PDF format. In addition, anyone wishing to receive the *Indiana Court Times* through e-mail should send a message indicating that desire to dguthrie@courts.state.in.us. This will have the effect of discontinuing your hardcopy subscription.

ICLEO

Submitted by Kim Jackson

Indiana is at the forefront of efforts to help minority and economically disadvantaged students pursue legal careers.

At the urging of Chief Justice Randall T. Shepard, the Indiana Conference on Legal Education Opportunity was established in 1997 by the Indiana Legislature and Governor Frank O'Bannon to assist Indiana minority, low income or economically disadvantaged college graduates in pursuing a law degree and a career in the Indiana legal community.

The Indiana Conference for Legal Education Opportunity (ICLEO) was patterned after the well-known national CLEO program and is the only **state-run** CLEO program. Only students who will be enrolled in an Indiana law school are eligible to participate in the ICLEO program.

Each year Indiana's program takes approximately 30 college graduates who have applied to any of the state's four law schools and exposes them to a six-week Summer Institute immediately before they begin law school. The Summer

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Institute is conducted at an Indiana law school to prepare students for the special nature of legal study. Room and board at the Summer Institute and certain expenses are provided by the ICLEO program. Students are required to live in a dormitory and devote themselves full-time to the program.

At the Institute, students are introduced to the areas of law in which they will receive instruction during their first year of law school. Law school professors are the primary instructors and offer, in addition to traditional classroom instruction, tips for success in law school.

Students who successfully complete the Summer Institute and become certified graduates of the program may be eligible for an annual living expense stipend. Stipends may be awarded for up to three successive academic years if the student remains eligible. The annual stipend currently is \$5,000.

Year 2000

With only eleven months remaining in 1999, State Court Administration will be sending vendors a request to voluntarily submit certification that their hardware and software does not contain a Year 2000 defect. In the next few months, all courts should review their electronic equipment (fax machines, computers, printers, etc.) and contact the vendor or manufacturer to ensure Year 2000 compliance.

The *Indiana Court Times* will continue to provide information about the Year 2000 as it becomes available. Also check State Court Administration's web pages for up to date information about vendors who have voluntarily submitted Year 2000 certification materials.

The ICLEO Program also helps students locate law-related summer employment after their first year of law school. Among the employers participating in the summer employment program are the Indiana appellate courts, several trial courts, other governmental employers, and law firms and attorneys in private practice. The salaries for the ICLEO Fellows are paid either by the employer or by ICLEO or some combination thereof. If you are interested in offering employment to an ICLEO Fellow or need additional information about ICLEO, please contact the Division of State Court Administration at (317) 232-2542.

If you know a student who has a bachelor's degree, has applied to an Indiana law school, and meets the eligibility requirements of ICLEO, please encourage the student to inquire about the ICLEO program. Information packets, which include an application, are available at any Indiana law school or through the Division of State Court Administration. The deadline for application for the 1999 ICLEO Fellows is March 2, 1999. Applications for ICLEO fellowships for the 2000-2001 school year will be available this fall.

Public Defender Commission

Submitted by Tom Carusillo

Public Defense Fund

The Public Defense Fund can benefit all counties.

The Public Defense Fund, I.C. 33-9-14, provides qualified counties 40% reimbursement of their indigent defense services provided in noncapital cases except misdemeanors. Generally, qualification requires the creation, by ordinance, of a local three member public defender board; the preparation of a County Comprehensive Plan for the delivery of indigent defense services (ordinance and plan samples, and drafting are available from the Commission); and compliance with the Standards of the Indiana Public Defender Commission. Reimbursement can help offset the substantial financial drain the public defense of a major noncapital offense can have on a county. By not qualifying under the Commission's Standards, a county must bear all of the indigent defense costs associated with a noncapital case. On the other hand, by having the foresight to qualify for reimbursement a county reduces its financial exposure from a noncapital case. In a sense the fund is insurance to mitigate the costs of public defense of noncapital cases. Every county can benefit from Public Defense Fund reimbursements.

However, several misconceptions about the Fund exist. Following, the five most common misconceptions are discussed:

ONE: A County must establish a Public Defender Office.

A Public Defender Office is **not** required. Indiana Code 33-9-15-5, provides that the county's comprehensive plan "must include at least **one** of the following methods of providing legal defense services to indigent persons:

- (1) Establishing a county public defender's office.
- (2) Contracting with an attorney, a group of attorneys, or a private organization.
- (3) Utilizing an assigned counsel system of panel attorneys for case-by-case appointments under section 9 of this chapter."

Though the statute requires use of one listed option, it does not exclude the use of other methods along with one of the three prescribed systems. Hybrid systems, combining one of the statutory systems with other delivery methods may be acceptable. This permits customizing the plan to meet a county's particular needs and desires. Establishing a Public Defender Office is not mandatory, but is optional.

TWO: Participation requires the hiring of support staff.

The Commission's Standards provide two separate methods of qualifying for reimbursement. A county may choose to have public defenders *without adequate support*

staffing, or public defenders *with adequate support staffing*. Support staffing entails secretarial, paralegal, law clerks and investigative staff. The difference in the two methods is in the number of cases they allow attorneys to handle under each method. For example, if a county chooses to operate without adequate support staffing, attorneys will be limited to 120 noncapital murders and other felonies. However, if a county adopts a system with adequate support staffing, the attorneys' caseload limit will increase to 150 noncapital murders and other felonies. Qualification under the Fund does not require the hiring of any support staff. Support staffing only becomes a concern if the county wishes to use the higher attorney caseload limits associated with adequate support staffing.

THREE: The reimbursements cover only attorney salaries or compensation.

Indiana Code 33-9-14-5 contemplates reimbursement of indigent defense services, not just attorney salaries or compensation. Support staff salaries, benefits (insurance, PERF., etc.), transcripts, depositions, investigators, experts, attorney training and malpractice coverage, equipment, phones, long distance charges, rent, library expenses, postage, stationary and copying expenses are among the expenses that the reimbursement statute may cover. Expenses incurred in providing legal representation to indigent persons pursuant to Commission Standards are eligible for reimbursement consideration.

FOUR: Costs recovered from indigent persons reduce the county's reimbursement.

Under I.C. 33-9-11.5-6, a court is authorized to require payment of costs of representation from indigent individuals found able to pay. Before July 1, 1997, reimbursement was limited to 25% of a county's **net** expenditure for defense services in noncapital cases. Effective July 1, 1997, the Legislature increased the reimbursement to 40% of defense services in all noncapital cases except misdemeanors, and the reduction of amounts eligible for reimbursement by sums collected from public defender clients was eliminated. As a result, counties are encouraged to continue to seek reimbursement from public defender clients who are found able to pay for all or a part of the services rendered to them. Amounts recovered do not reduce the county's reimbursement from the state.

FIVE: Participation cannot commence until the start of the next fiscal year.

Participation in the reimbursement program can begin anytime of the year once the necessary components are in place. For many counties this means passing an ordinance creating a local public defender board, adopting a comprehensive plan, and continuing to provide services as before. No reason exists to put off immediately exploring implementation of the program.

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The reimbursement program offers a unique opportunity to bring state funds to the county. It also provides assistance in meeting the defense costs of cases in which the death penalty is not sought.

To receive more information on how your county can benefit from this program contact the Commission's staff attorney, Tom Carusillo, at 317-232-2542, or write to the Commission at 115

West Washington Street, Suite 1080, Indianapolis, IN 46204. Arrangements can be made for meetings in your county to discuss the Fund in more detail.

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High Court Hires New Sheriff

David M. Benjamin has been selected as Sheriff of the Supreme Court to fill the vacancy created by the retirement of Paul Lombardo on December 31, 1998. Benjamin began his new duties on January 11, 1999.

"The Court was looking for a candidate with high integrity and a strong background in law enforcement. We are convinced Mr. Benjamin has those qualities. I look forward to having him in the Court's service," said Chief Justice Shepard.



Benjamin retired recently as a sergeant with the Indiana State Police to become Sheriff. He had been with the State Police for 27 years and had served as commander of the Indiana State Police Recruit Academy since 1986. The Sheriff of the Court performs duties similar to a bailiff in a trial court. He will also be responsible for security and other tasks assigned by Supreme Court Administrator, Douglas Cressler.

Criminal Courts Technical Assistance Project (CCTAP)

American University in Washington D.C., in conjunction with the National Legal Aid and Defender Association, the Pretrial Services Resource Center, and the Justice Management Institute has established the Criminal Courts Technical Assistance Project (CCTAP).

This project was established to provide free technical assistance to criminal courts and related agencies for both internal management and operational needs. Types of support available include on-site consultation, multi-jurisdictional

workshops on topics of common need or interest, and special publications of best practices on topics of importance to judicial systems operations.

This project was initiated in response to some of the concerns raised by judges, court administrators, and other judicial system practitioners in an effort to enhance and improve the support of state and local judicial systems. To obtain additional information, please contact Jesse Hathcock, American University, at (573) 751-4377.

Amicus Curious

Submitted by Kim Jackson

Recusal-Appointment of Special Judge

Question: When a special judge disqualifies or otherwise discontinues service in a case, how is the successor special judge selected?

Answer: Under Ind. Trial Rule 79(I), if a special judge assumes jurisdiction and thereafter ceases to act as special judge for any reason except the granting of a motion for a change of judge, the regular judge of the court in which the case is pending must assume jurisdiction of the case, provided the regular judge has not previously served in the case and is not disqualified for some reason. For instance, if a special judge recuses in a case pending in the Circuit Court of a particular county, the case is returned to the Circuit Court Judge, who thereafter will preside over the case. If, however, the regular judge of the court in which

the case is pending has previously served in the case or cannot accept the case for another reason (disqualification, etc.), the successor judge is chosen by local rule.

All trial courts have local rules which set forth the procedure for appointing special judges. However, many of those rules do not refer specifically to the appointment of successor special judges. As a result, routine requests for appointment of successor special judges sometimes are forwarded to the Indiana Supreme Court, which typically remands the cases to the trial courts for appointment of the successor special judges under local rules.

To avoid this problem and the delays inherent in it, local courts are encouraged to include in their local rules a provision specifying the procedure for appointing a successor special judge. Such a provision could specify that a successor special judge is chosen under the local rule in the same manner as the original special judge.

Library Management

The following titles have been received by the Indiana Supreme Court Law Library in its capacity as a repository for State Justice Institute grant products. This list continues the columns published in previous issues of Indiana Court Times. SJI publications can be borrowed from the library by calling (317) 232-2557.

1. Courts and Their Communities: Local Planning and The Renewal of Public Trust and Confidence. California State-wide Conference, San Francisco: Judicial Council of California, 1998. KFC 955 A.75 C6 1998.
2. New Hampshire Statewide Conference on Juvenile Justice, New Hampshire: New Hampshire District Court, 1998. KFN 1796 .Z9 N42 1998.
3. A National Agenda for Prompt and Affordable Justice in the 21st Century, Denver: The Justice Management Institute, 1998. KF 384 .N38 1998.
4. National Benchbook on Psychiatric and Psychological Evidence and Testimony, Washington, D.C.: ABA Commission on Mental and Physical Disability Law, 1998. KF 8965 .P2226 1998.
5. Through the Eyes of the Juror: a Manual for Addressing Juror Stress, Williamsburg: National Center for State Courts, 1998. KF 8972.T55.
6. Applying Drug Court Concepts in the Juvenile and Family Court Environments: A Primer for Judges, Washington D.C.: American University, Justice Programs Office, School of Public Affairs, 1998. KF 3890.D7 A6 1998.
7. Current Use of Dangerous Assessments in Sentencing Domestic Violence Offenders: Final Report, Pacific Grove, CA: Justice Research Center, 1998. KF 505 .R64 C8 1998.
8. Model Rules and Curriculum for Computer Generated Evidence, Annapolis, Md.: Judicial Institute of Maryland, 1998. KFM 1740 .M6 1998.
9. Pilot Program for the Performance Evaluation of County and Municipal Judges in Utah: Final Report, Salt Lake City: Utah Judicial Council, 1998. KFU 525.5.R3 P5 1998.
10. Judicial Retention Evaluation Programs in Four States: a Report with Recommendations, Chicago: American Judicature Society, 1998. KF 8778.E88 1998.
11. Family Violence: Emerging Programs for Battered Mothers and Their Children, Reno: National Council of Juvenile and Family Court Judges, 1998. HQ 809.3 .U5 F19 1998.
12. Court Interpreting Services in State and Federal Courts: Reasons and Options for Inter-Court Coordination: Final Report, Williamsburg: National Center for State Courts, 1998. KF 8807.C68.

Legal Motions

Legal Motions features people changes in the Indiana Judiciary. If you have any news of retirements, resignations, new appointments, or people on the move, we would be happy to feature it.

Judicial Appointments

The Hon. John Marnocha was appointed to fill the vacancy in **St. Joseph Superior Court**. He replaces The Hon. Sanford Brook.

The Hon. Stanley Levine was appointed to fill the vacancy in **Allen Superior Court**. He replaces The Hon. Vern Sheldon.

The Hon. Peter Haviza was appointed to fill the vacancy in **Randolph Superior Court**, effective February 9,

1999. He replaces The Hon. Kenneth Sullivan.

The Hon. William Vance was appointed to fill the vacancy in **Jackson Circuit Court**. He replaces The Hon. Robert Brown.

The Hon. Wayne Trockman was appointed to fill the vacancy in **Vanderburgh Superior Court**. He will be replacing The Hon. William Brune, effective February 9, 1999.

Judge Cantrell Receives Award for "Excellence in Public Information and Education"

The Hon. Julie N. Cantrell, Lake Superior Court, County Div. III was chosen to receive the Indiana Judges Association 1998 media award for "Excellence in Public Information and Education." This annual award is given to an Indiana judge and to Indiana journalists for having "gone the extra mile" in providing responsible, informative and educational matters to the community concerning the Indiana Judiciary.

Judge Cantrell was recognized and presented with the award at the Indiana Judges Association Luncheon on Friday, December 12, at the Marriott Hotel in Indianapolis.

The Community Relations Committee of the Judicial Conference of Indiana receives and reviews nominations for the awards and selects the recipients.

Judicial Election Results will be published in the next edition of the Indiana Court Times.

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Our goal is to foster communications, respond to concerns, and contribute to the spirit and pride that encompasses the work of all members of the judiciary around the state. We welcome your comments, suggestions and news. If you have an article, advertisement, announcement, or particular issue you would like to see in our publication, please contact us.

If you would like to receive this newsletter via e-mail, or by accessing our website, please send a message to dguthrie@courts.state.in.us to have your name added to our electronic list and removed from our hardcopy mailing list.

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**This newsletter reports on
important administrative matters.
For future reference, add it to your
Trial Court Administrative Manual.**

Indiana Court Times

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